IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 86/2002
(Pushker Lal Pancholi & Anr. V/s State of Rajasthan & anr.)

Date of Order : 30/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mahendra Trivedi, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Jitendra Singh Rathore for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 19.7.2001 passed by learned Sessions Judge, Banswara (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 11.11.1999 passed by Chief Judicial Magistrate, Banswara (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties. Perused the orders passed by both the courts below as also the material on record.

The case as set up by the non-petitioner No.2 is that he purchased 14 shares from petitioner No.1 Pushker Lal Pancholi. Thereafter, the shares were required to be transferred

in favour of the complainant non-petitioner No.2, but the petitioner No.1 took one share from the complainant on the pretext to show it to the share broker and thereafter did not return the same and thus committed the offence of criminal breach of trust. It is further alleged that petitioner No.1 got the duplicate shares issued from the Rajasthan Bank on the pretext that the original shares were lost. Petitioner No.2 Smt. Bharat Mani wife of the petitioner No.1, has been arraigned as accused as the shares stood in her name.

On careful perusal of the orders passed by the trial court as well as the revisional court, it no where appears that the petitioner No.2 was ever entrusted with the shares by the complainant, nor petitioner No.2 dishonestly or fraudulently induced the complainant to part with the property i.e. Shares. In the circumstances, therefore, in my view, both the courts below fell in error in taking cognizance of the offence against the petitioner No.2. However, there is strong evidence against petitioner No.1 that he sold the share to the complainant and on the pretext of showing to the share broker took one share with the assurance that after showing it to the share broker, he will return the same, but he failed to return the share on demand by the complainant and therefore, the offences of criminal breach of trust as also taking the share fraudulently and dishonestly are prima-facie made out against him.

In the result, the criminal misc. petition is partly allowed. The order impugned dated 11.11.99 passed by the trial court and affirmed by the revisional court by the order impugned dated 19.7.2001 to the extent taking of cognizance and issuing process against non-petitioner No.2 Smt. Bharat Mani is set aside. However, the orders against non-petitioner No.1 Pushker Lal Pancholi passed by both the courts below are maintained.

(H.R.PANWAR),J.

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